key would not possess the swallows that flew over the prison." One may go farther with this illustration, and show that there would have to be something more than a power of control and an intention to exclude others, in order to give the person having the key actual possession of the chattels about him. If, for instance, he were a man of discrimination, he would see on all sides things he would not want, though they were within his control, and he did not intend to allow the prisoner to use them; and of those things he could not be said to be possessed. In other words, it is best not to look at the element of intention from either of the above-mentioned points of view exclusively: for actual possession of a chattel there must be power of control; an intention to make a use inconsistent with possession in any one else; and an intention to exclude every one else from interfering with such use. These two intentions must be joined, for they are complementary. Applying these principles to the leading case of *Merry* v. *Green*, 7 M. & W. 623, one finds there was an intention on the part of the plaintiff to use the contents of the secretary and to exclude others, and that this intention was fulfilled, and therefore possession was taken. Coming to the Iowa case, to find the requisite intention one must go back of acquiring of title to the land: ownership of the land includes an intention to make use of the rights of ownership in the well-known cases of animals *feræ naturæ*, and falling fruit. And so here, the plaintiff must be taken to have intended to appropriate to his exclusive use aerolites, as he would rain and snow which might fall upon his land.

THE POLICE POWER AND THE LAKE FRONT CASE. — That interesting and dangerous thing called the police power, as noticeable for its vagueness as for its necessity, is often rather wildly talked about, though the actual decisions have confined it, with fair success, to the protection of the public health and the public morals, on the one hand, and on the other to limiting the legislative power to acts which may within the bounds of reason be supposed to lead towards the objects which the Legislature is authorized to seek. In the Chicago Lake Front Case[1] the Supreme Court have said that, as the soil under navigable waters is held by the people of the State in trust for the common use, any legislation concerning their use affects the public welfare. "It is therefore appropriately within the exercise of the police power of the State." The decision must go the whole length of the language, for the grant was made twenty-five years ago, when it was much less valuable, and it was so carefully conditioned that the least infringement by the company of public rights would forfeit their title. The decision must be that any large grant of the kind is a license revocable by the Legislature whenever in the judgment of the court such an interpretation would largely promote the pecuniary welfare of the community; for it is here only pecuniary welfare that is affected: the community saves what constitutional confiscation would cost.

These large questions of the division of the sovereign powers among the departments of our government cannot be adequately treated by curt logical reasoning, but call rather for trained political instinct and broad judgment. Therefore, to say that the minority judgment is clearer and supported by authorities more direct, is not necessarily to prove that it is sounder; nevertheless, their arguments are very hard to escape. The power to grant such land, they reason, is admitted by the majority, and

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[1] *Illinois Central R. R. Co.* v. *State of Illinois*, 13 Sup. Ct. Rep. 110.

it is difficult to say by what principle the extent of the grant is to be limited, as that is matter of legislative discretion, having regard to the reasonable connection of the means with the end; and it is impossible to say that the amount of land granted in this case is absurdly beyond the needs of a great railroad for its terminal facilities. Besides the difficulty of seeing on general principles why this is a wholly unreasonable use of legislative discretion, there remains the difficulty of former holdings of the court. "We have no knowledge of any authority or principle which could support the doctrine that a legislative grant is revocable in its own nature, and held only *durante bene placito*," *Smith* v. *Taylor*, 9 Cranch, 93. "It is now too late to contend that any contract which a State actually enters into when granting a charter to a private corporation is not within the protection of the clause in the Constitution of the United States that prohibits States from passing laws impairing the obligation of contracts," *Stone* v. *Mississippi*, 101 U. S. 814. To go back on a principle so generally understood as this, is a radical thing to do, needing strong ground. The value of the present decision as an indication of the overthrow of this principle is weakened by its closeness, the Chief Justice and Mr. Justice Blatchford not taking part, and Mr. Justice Gray and Mr. Justice Brown concurring in the dissenting opinion of Mr. Justice Shiras.

RECENT CASES.

ARREST, ON CIVIL PROCESS — EXTRADITION. — Petitioner was in jail for a criminal offence. The day before the expiration of his sentence, on the requisition of the governor of another State, a warrant was issued for his apprehension. The next day, and after the expiration of his sentence, he was apprehended; but the keeper refused to surrender him, on the ground that on the previous day the prisoner had been entered on the jail-book as arrested on a civil writ, and committed for want of bail. The petitioner gave a bail-bond, and claimed a discharge on the ground that extradition proceedings could not be had against him while under arrest on civil process. *Held*, that the mere entry of a commitment on the jail-book did not constitute an arrest, and petitioner was properly held under the executive warrant. *In re Harriott*, 25 Atl. Rep. 349 (R. I.).

It seems that but two cases have arisen directly upon this point in the United States. *William* v. *Bacon*, 10 Wend. 636, and *Ex parte Rosenblatt*, 51 Cal. 285, both of which seem to be in general accord with the principal case.

BILLS AND NOTES — INDORSEMENT. — The payee of a note, a married woman, to accommodate the maker, wrote on the back of the note, "I hereby charge my separate estate with the amount of this note. [Signed] E. B. R." *Held*, that she was liable as indorser; for, as these words were equally consistent with any kind of an obligation, they had no effect on her signature, which without these constituted an ordinary indorsement. *Robertson* v. *Rowell*, 33 N. E. Rep. 898 (Mass.).

The words written above the signature set forth no obligation in themselves, but imply the existence of some other obligation to which they are collateral; and the natural inference from the situation is that this implied obligation is an ordinary indorsement. The court distinguishes this case from that of a guaranty — a distinct obligation — written by the transferor. Cf. 2 Daniel Neg. Instrs. § 1781–83.

BILLS AND NOTES — UNITED STATES CIRCUIT COURTS — JURISDICTION. — Act of Congress (25 Stats. at Large, p. 434) enacts that the circuit courts shall have jurisdiction over suits by assignees only in cases where the court would have had jurisdiction if no assignment had been made. In an action on a promissory note made for the accommodation of the payee, who was a citizen of same State as the maker, and indorsed to plaintiff, a citizen of another State, it was *held*, that the circuit court had jurisdiction, as the payee never had a cause of action against the maker, and therefore in indorsing the note did not assign, but created a cause of action which was at its inception a claim between citizens of different States. *Holmes* v. *Goldsmith*, 13 Sup. Ct. Rep. 288.